

Title 316    NEBRASKA DEPARTMENT OF REVENUE  
Chapter 21    WITHHOLDING INCOME TAX REGULATIONS

REG-21-001 REQUIREMENTS OF WITHHOLDING TAX FROM WAGES

001.01 Every employer maintaining an office or transacting business within the State of Nebraska and making payment of any wages that are taxable under the Nebraska Revenue Act of 1967, as amended, and are subject to withholding under the Internal Revenue Code, as amended, to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period such amount of tax as will result in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due as the result of the inclusion of the employee's wages received during such calendar year in his or her adjusted gross income.

001.02 Every payor who is making payment for personal services performed or to be performed substantially in this state to a nonresident individual who is not subject to withholding on such payment under the Internal Revenue Code or to a corporation partnership, or limited liability company described in this subsection shall deduct and withhold from such payment for the Nebraska individual income tax.

001.02A Payments to a nonresident for personal services made by a person engaged in business in this state or with a business location in this state are not subject to withholding if the payments made during the year total less than six hundred dollars (\$600.00).

001.02B Payments to a nonresident for personal services made by any person not included in 001.02A above are not subject to withholding if the payments made during the year total less than five thousand dollars (\$5,000.00).

001.03 Payments to the following business entities for personal services performed by nonresidents are considered to be payments for personal services that are subject to withholding under this regulation.

001.03A For a corporation which is receiving a payment for personal services performed or to be performed substantially in this state and of which all or substantially all of the shareholders are the persons performing personal services of the same type, such payment shall be deemed the wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967. The amount withheld shall be deemed to be withheld from the individuals.

001.03B For a partnership which is receiving a payment for personal services performed or to be performed substantially in this state and of which all or substantially all of the partners are the persons performing personal services of the same type, such payment shall be deemed wages of the individuals performing the personal services and subject to the income tax on individuals by the Nebraska Revenue Act of 1967. The amount withheld shall be deemed to be withheld from the individuals.

001.03C For a limited liability company which is receiving a payment for personal services performed or to be performed substantially in this state and of which all or substantially all of the members are the persons performing personal services of the same type, such payment shall be deemed wages of the individuals performing the personal

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services and subject to the income tax on individuals by the Nebraska Revenue Act of 1967. The amount withheld shall be deemed to be withheld from the individuals.  
(Section 77-2753, R.R.S. 1996. November 11, 1998.)

REG-21-002 DEFINITIONS FOR WITHHOLDING TAX PURPOSES

002.01 For the purposes of these regulations, the provisions of the Internal Revenue Code (IRC) and its applicable regulations with respect to deductions and withholding of federal income tax by employers, including the meaning of the various federal terms (such as employer, employee, wages, payroll period, withholding allowances) shall apply for Nebraska purposes, except as otherwise specifically provided in these regulations or where such federal rules and definitions are clearly inconsistent with and inapplicable to the provisions of the Nebraska Revenue Act of 1967, as amended.

002.02 An employer is any person or organization qualifying as an employer for federal income tax withholding purposes and maintaining an office or transacting business within Nebraska, whether or not a paying agency is maintained within the state. The fact that an employer may not be subject to Nebraska income tax is not relevant.

002.02A Employer also includes the State of Nebraska, or any subdivision, agency, or instrumentality thereof, and the United States, or any agency or instrumentality thereof.

002.02B For the purposes of these regulations, including the filing of returns and the imposition of penalties, the term employer shall also include any payor required to withhold under Reg-21-001.02.

002.03 Employee shall mean any person defined as an employee under the IRC and shall also include the nonresident individual, partnership, or corporate payee from whom withholding is required.

002.04 For the purposes of withholding from nonresidents not subject to federal withholding, personal services does not include services performed where capital furnished by the nonresident is a material income-producing factor. Capital will be considered a material income-producing factor whenever the value of the use of capital, or the value of the capital furnished, is in excess of 50 per cent of the amount of the payment.

Examples of such services include the construction of improvements to real estate where the nonresident contractor furnishes the materials incorporated into the improvement, or custom combining where the nonresident furnishes the machinery and equipment used.

002.05 Substantially all shall mean:

002.05A For a corporation, the shareholders who own eighty per cent of the voting stock. A shareholder will be considered as owning any share of stock owned directly and every share he or she is considered to own under either IRC section 267 or 318, and

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002.05B For a partnership, the partners who own eighty per cent of the partnership. A partner will be considered as owning any part of the partnership owned directly, and all parts of the partnership he or she is considered to own under either IRC section 267 or 318.

002.06. Native American Reservation Indian shall mean any enrolled member of a recognized Native American Indian Tribe, or any person who is at least one-fourth Native American Indian blood, who resides in Nebraska on a Native American Indian reservation.

002.07 Reservation shall mean all land within the original boundaries of any Native American Indian Reservation in Nebraska which has not been specifically removed by Act of Congress or Executive Order.

002.08 Wages shall include any payments that are subject to federal withholding including gambling winnings.

002.08A Wages shall also include the amount paid for personal services performed or to be performed in this state from which withholding is required.

002.08B Wages shall also include the amount paid for pensions and annuities when the recipient has requested or the payor is required to withhold federal income tax from such payments.

002.08C Wages shall not include any employer contributions to retirement plans, such as IRC section 401(k) plans, on behalf of persons subject to federal withholding on payments from the employer if the specific contributions are not subject to federal withholding.

002.09 Federal Form W-2 shall include all versions of the form for reporting different payments subject to federal withholding, including the Federal Form W-2G, Federal Form 1099-R, and Federal Forms 1099-MISC reporting nonresident withholding.

(Section 77-2753, R.S.Supp. 2005. March 7, 2006.)

REG-21-003 NEBRASKA EMPLOYER IDENTIFICATION NUMBER

003.01 Each employer will be identified by a Nebraska employer identification number, which will be obtained prior to the first payment of wages subject to Nebraska withholding. To request a Nebraska employer identification number, a Nebraska Tax Application must be completed and forwarded to the Nebraska Department of Revenue, Box 94818, Lincoln, Nebraska 68509-4818. Every application for said number must be completed in each detail and in no event will an employer be considered registered unless the employer has previously obtained or applied for a federal employer identification number. Each employer identification number issued to an employer is a permanent number and the same number will not be issued to any other business entity. Should the character of the business entity change, resulting in a new legal entity, e.g., conversion from a partnership to a corporation, a new identification number must be obtained.

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003.02 A Nebraska Withholding Identification Certificate containing the employer's name, address, and assigned Nebraska employer identification number will be issued by the Department of Revenue. This certificate should be maintained in the employer's permanent records. The Nebraska employer identification number is nontransferable and should be referred to on all reports, returns, and correspondence concerning the employer's withholding account.

003.03 An employer who does not maintain centralized payroll records or who has regional pay centers may request an identification number for each separate location that prepares and maintains payroll records. An employer may also request a separate identification number for the nonresident withholding required by Reg-21-001.02.

(Section 77-2753, R.S.Supp., 1993. May 14, 1994.)

REG-21-004 DETERMINING TAX TO BE WITHHELD

004.01 The Nebraska income tax to be withheld by an employer or a payor must be determined in accordance with one of the following income tax withholding methods on wages and other payments subject to withholding:

Method I - The percentage method. The amount to be withheld will be determined by subtracting from the gross wages the value of the withholding allowances and taking the result to the withholding rate schedule. The State Tax Commissioner shall publish withholding rate schedules for the different pay periods. The income levels and rates shall be established so that the withholding will approximate the actual liability using the standard deduction and personal exemption credit. The rate schedules as published in the Nebraska Circular EN, Nebraska Tax Withholding, will be applied by the employer to the amount of wages or payments subject to tax by Nebraska and subject to the withholding tax under the Internal Revenue Code , except payments subject to Subtitle C, Chapter 24, section 3406.

Method II - The wage bracket method. The amount to be withheld will be determined by taking the gross amount of wages to the appropriate table. All employers and payors that hold an active Nebraska Withholding Identification Certificate will be mailed the Nebraska Circular EN, Nebraska Tax Withholding, which contains withholding tax tables based upon the amount of wages paid, the length of the pay period, the number of federal withholding allowances claimed, and reflecting the above Nebraska withholding schedules.

004.02 Where supplemental wages such as bonuses, commissions, overtime pay, and sales awards are paid at the same time as regular wages, the income tax to be deducted and withheld should be determined as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at a different time, the employer may determine the tax to be withheld by adding the supplemental wages either to the regular wages for the current payroll period or to the regular wages for the last preceding payroll period within the same calendar year, or the employer may elect to withhold on the supplemental wages by using a flat withholding rate as determined by the State Tax Commissioner.

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004.03 The Nebraska tax is to be withheld on the basis of the same payroll period which is properly used for federal income tax purposes.

004.04 In addition to the tax required to be withheld under this regulation, an employer and employee may agree that an additional amount be withheld from the employee's wages and a payor and payee may agree that an additional amount be withheld from the payment subject to withholding. The agreement is effective for such period as the employer and employee or the payor and payee mutually agree. If the agreement fails to provide a termination date, either the employer or the employee or the payor or the payee, by furnishing a written notice to the other party, may terminate the agreement effective with respect to the first payment subject to withholding made on or after the beginning of the next calendar quarter which occurs at least 30 days after the date on which such notice is furnished.

004.05 The amount deducted and withheld pursuant to an agreement as described in the above paragraph shall be considered as tax required to be deducted and withheld under the Nebraska Revenue Act, and all provisions of law and regulations applicable to such tax are applicable with respect to any amount deducted and withheld pursuant to such agreement. At no time can an employee and employer or a payor and payee agree to withhold an amount less than would be withheld using the established Nebraska withholding rate schedules or tables.

004.06 The amount to be withheld from gambling winnings shall be a flat withholding rate applied to the winnings. The flat withholding rate shall be determined by the State Tax Commissioner.

004.07 The amount to be withheld from pensions and annuities shall be based on the federal method. The amount to be withheld from periodic payments shall be calculated in the same manner as withholding from wages. The amount to be withheld from nonperiodic payments shall be a flat withholding rate applied to such payment. The flat withholding rate shall be determined by the State Tax Commissioner. The recipient may also select an additional fixed amount per periodic or nonperiodic payment. . See Reg-21-004.04.

004.08 Alternative methods of withholding. An employer using a federally approved alternative method of calculating withholding may use the same method for computing state income tax withheld. Such methods include Annualized Wages, Average Wages, Cumulative Wages, and other methods allowed under Internal Revenue Code section 3402(h).

(Section 77-2753, R.S.Supp. 2005.March 7, 2006.)

**REG-21-005 DETERMINING THE TAX TO BE WITHHELD ON WAGES PAID TO A NEBRASKA RESIDENT--WHEN OTHER STATES' WITHHOLDING APPLIES**

005.01 If an employer is required to withhold Nebraska income tax pursuant to Reg-21-001, then all wages paid to a resident of Nebraska are subject to withholding even though some or all of his services for which the wages are paid are performed outside of Nebraska.

005.02 An employer required to deduct and withhold income taxes of other states, political subdivisions of such states, or the District of Columbia from wages paid to a resident of

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Nebraska shall deduct and withhold from those wages the amount of Nebraska individual income tax determined under these regulations less the amount required to be deducted and withheld from those wages under the laws, rules, and regulations of such other state, political subdivision of such state, or the District of Columbia.

Example:

005.02A If a resident of Nebraska is paid \$100 per week by an employer who is required to deduct and withhold from his wages Nebraska and Kansas income taxes and if the amount required to be withheld is \$2.00 for Nebraska and \$1.26 for Kansas, the amount of Nebraska tax required to be deducted and withheld is \$0.74.

005.02B If a Nebraska resident is paid \$100 per week by an employer who is required to deduct and withhold from his wages Nebraska and Iowa income taxes and if the amount required to be withheld is \$2.00 for Nebraska and \$2.50 for Iowa, then no Nebraska tax is to be withheld

(Sections 77-2715 and 77-2753, R.S.Supp., 1987. September 15, 1975.)

REG-21-006 DETERMINING TAX TO BE WITHHELD ON WAGES PAID TO A  
NONRESIDENT

006.01 An employer shall deduct and withhold income tax on all wages paid to an employee who is a nonresident of Nebraska for services performed within Nebraska. The tax to be deducted and withheld shall be determined according to the methods contained in Reg-21-004. If the services of a nonresident employee are performed entirely within Nebraska, his employer shall deduct and withhold the tax from all wages paid to such employee. Wages paid to a nonresident employee for personal services rendered entirely outside of Nebraska are not subject to withholding.

006.02 If a nonresident employee performs services partly within and partly without Nebraska, he should file a Nebraska Nonresident Employee Certificate of Allocation of Withholding Tax, Form 9N, with his employer for the purpose of determining his Nebraska withholding tax liability.

006.03 The employer may withhold on the basis of the apportionment shown by the nonresident employee on his certificate, but must nevertheless make necessary adjustments during the year, so that the proper amount of tax is withheld from the employee's wages. For the purpose of making these adjustments, the proportion of remuneration which is paid for services rendered within Nebraska shall be determined as follows:

006.03A If the services are rendered by a traveling salesman, agent, or other employee whose compensation on the basis of commission depends directly on the volume of business transacted by him the amount attributable to services within Nebraska is that proportion of the compensation received which the volume of business transacted by the employee within the state of Nebraska bears to the total volume of business transacted by him both within and without Nebraska.

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Example:

Employee's Nebraska Gross =	\$1,000.00
Employee's Gross (Total)=	\$5,000.00
Nebraska Proportion of Gross =	20%
Nebraska Withholding from Tables =	\$10.00
(x) Nebraska Proportion of Gross =	20%
Nebraska Withholding Tax=	\$2.00

006.03B With respect to other employees whose compensation is computed on an hourly basis, the amount of wages attributable to services within Nebraska is that portion of the total compensation which the total number of hours to be worked within Nebraska bears to the total number of hours to be worked both within and without Nebraska.

Example:

Employee's Monthly Nebr.\Hours =	80
Employee's Monthly Total Hours =	160
Nebraska Proportion of the Hours =	50%
Nebraska Withholding from tables =	\$10.00
(x) Nebraska Proportion of Hours =	50%
Nebraska Withholding Tax=	\$5.00

006.03C With respect to employees who are paid on a per mile basis, the amount of wages attributable to services within Nebraska is that proportion of the total compensation which the monthly total number of miles within Nebraska bears to the monthly total number of miles both within and without Nebraska.

Example:

Employee's Monthly Nebr.\Mileage =	2,000
Employee's Monthly Total Mileage =	10,000
Nebr. Proportion of the Mileage =	20%
Nebraska Withholding from tables =	\$10.00
(x) Nebr. Proportion of Mileage =	20%
Nebraska Withholding Tax=	\$2.00

006.03D With respect to other employees the amount of wages attributable to services within Nebraska is that proportion of total compensation which the total number of working days employed in Nebraska bears to the total number of working days employed both within and without Nebraska, exclusive of nonworking days. Nonworking days usually include Saturdays, Sundays, holidays, and days absent because of illness, personal injury, vacation, or leave with or without pay.

Example:

Employee Days in Nebr. in Month =	10
Total Employee Days in Month =	20
Nebraska Proportion of Days =	50%
Nebraska Withholding from tables =	\$10.00
(x) Nebraska Proportion =	50%
Nebraska Withholding Tax=	\$5.00

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006.04 If an employee expects the services rendered to his employer to remain relatively constant with the prior year, he should compute the percentage of income applicable to such prior year's experience and use that percentage on his Form 9N.

(Sections 77-2733 and 77-2753, R.S.Supp., 1987. May 8, 1988.)

**REG-21-007 EMPLOYER'S RETURNS AND PAYMENT OF WITHHELD TAXES**

007.01 Every employer required to deduct and withhold tax from an employee's wages shall file a withholding return and pay over to the Department of Revenue the taxes required to be deducted and withheld. The return shall be filed on the Nebraska Employer's Quarterly Withholding Return, Form 941N.

007.01A A return is required for each period or portion of a period. The return must be filed for every tax period even if there has been no withholding.

007.01B The period is the reporting frequency as assigned by the Department of Revenue. Normally it will be quarterly, but in the case of employers who have small tax liabilities, five hundred dollars (\$500.00) or less for a calendar year, they may be assigned an annual filing frequency.

007.01C The return must be received by the Department of Revenue, or if mailed, must be postmarked, on or before the last day of the month following the close of each period.

007.01D Taxpayers who file a Nebraska Quarterly Employers Withholding Return, Form 941N, have the option of filing electronically via the Internet. Taxpayers can access this system from the Department of Revenue's Web site.

007.02 When the total amount to be deducted and withheld by any employer for either the first or second month in a calendar quarter exceeds five hundred dollars (\$500.00), the employer shall make monthly deposits by filing a Nebraska Employer's Monthly Withholding Deposit, Form 501N, with the Department of Revenue. The Form 501N shall be filed on or before the 15th day of the second and third month of each calendar quarter. The amount so paid shall be allowed as a credit against any liability shown on the employer's next quarterly Nebraska withholding tax return.

007.02A Form 501N is not required to be filed when monthly payments are made if the taxpayer is enrolled in the Department of Revenue's electronic funds transfer (EFT) program.

007.03 On or before March 15 of each year, each employer shall file with the Department of Revenue a copy of each statement furnished to each of its employees which showed the total Nebraska taxes withheld from wages during the prior calendar year. The statement required to be filed is the state copy of Federal Form W-2. The employer shall also file a Nebraska Reconciliation of Income Tax Withheld, Form W-3N, on or before March 15 of each year in accordance with the instructions contained in Reg-21-013.



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007.04 The last return of withholding tax for any employer which discontinues its business or which permanently ceases to pay wages shall be clearly marked Final Return. This return and the full remittance for amounts deducted and withheld shall be sent to the Department of Revenue on a Nebraska Employer's Quarterly Withholding Return, Form 941N. The employer shall file with the Department of Revenue a completed Nebraska Reconciliation of Income Tax Withheld, Form W-3N, and the state copies of Federal Form W-2, which shall cover that part of the calendar year in which the employer operated its business or paid wages.

007.05 An employer which temporarily ceased to pay wages, including an employer engaged in seasonal activities, shall continue to file returns but shall enter on the face of the return the date of the last payment of wages and the date when it expects to resume making such payments.

007.06 Every employer which is considered under the Internal Revenue Code to be a successor of another employer shall be a successor for Nebraska income tax withholding and shall file returns and make payments for Nebraska in a comparable manner.

(Sections 77-1784 and 77-2756, R.S.Supp., 2005. March 7, 2006.)

REG-21-008 INFORMATION STATEMENT FOR EMPLOYEES

008.01 Every employer required to deduct and withhold a tax from an employee's wages is required to furnish to each such employee, in respect to those wages, a legible statement in duplicate, on Federal Form W-2 showing the amount of wages paid by the employer to the employee during the calendar year, the amount deducted and withheld as tax, and the other information required to be shown on such form. To meet this requirement, an employer must furnish his or her employee with a "state copy" and an "employee's copy" of the completed form.

008.02 The required statement, in duplicate, shall be furnished the employee on or before March 15 following the close of such calendar year, or if his or her employment is terminated before the close of such calendar year, within 30 days after the last payment of wages is made.

008.03 Every payor required to deduct and withhold from a payment to a nonresident individual under Reg-21-001.02A is required to furnish a legible statement in duplicate on Federal Form 1099-MISC to the payee.

008.04 Every payor required to deduct and withhold from a payment to a corporation under Reg-21-001.02 is required to furnish a legible statement in duplicate on Federal Form 1099-MISC to each shareholder of such corporation who performed services within the state.

008.04A The total amount of the payment shall be divided among the shareholders performing the service in Nebraska according to their interest in the corporation. The amount withheld, which is computed on the total payment to the corporation, shall be divided among the shareholders in a similar manner and will be allowed as a credit on the individual income tax returns of the shareholders.

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008.04B If the corporation fails to provide to the payor the information necessary to prepare the Federal Form 1099-MISC for the shareholders, the payor shall prepare the Federal Form 1099-MISC in the name of the corporation and shall deliver the copies normally given to the employee to the Department of Revenue in the same manner as forms that are not deliverable under Reg-21-013.03.

(Section 77-2754, R.R.S. 1943. May 14, 1994.)

**REG-21-009 PERSONS FROM WHOM THE TAX IS NOT WITHHELD**

009.01 The withholding tax does not apply to payments that are not either wages under the Internal Revenue Code, or payments for personal services performed in this state as described in Reg-21-001.02B. Resident self-employed persons are not subject to withholding. Partners are considered business proprietors and, therefore, amounts payable to resident partners are not subject to withholding, even though such payments are made as personal service compensation. Corporate directors are not employees, and therefore, director fees paid to directors who are residents of Nebraska are not subject to withholding.

009.02 Generally, unless compensation paid to individuals is subject to federal withholding, or is a payment to a nonresident for the performance of personal services within this state, such compensation is not subject to Nebraska withholding. However, persons receiving such income may be required to make estimated tax payments. For an explanation of estimated tax payments, see Reg-20-001 through Reg-20-008.

009.03 The withholding tax does not apply to wages paid to a Native American Reservation Indian for services performed on a Native American Indian Reservation in Nebraska. If the services are performed both on and off a Native American Indian Reservation in Nebraska, the procedure contained in Reg-21-006.02 must be used or the employer must withhold from the entire amount of the wages.

009.04 The withholding tax does not apply to a Nebraska nonresident employee for services performed in more than one state who is exempted from Nebraska income tax by federal law covering certain railroad, motor carrier, and airline employees.

(Section 77-2769, R.R.S., 2003, and section 77-2753(1), R.S.Supp., 2005. March 7, 2006.)

**REG-21-010 WITHHOLDING EXEMPTIONS**

010.01 In determining the proper tax to be deducted and withheld from an employee's wages, the employer shall allow the number of exemptions claimed by the employee on his or her Employee's Withholding Allowance Certificate, Federal Form W-4, for federal income tax purposes. An employer shall rely upon the number of federal withholding exemptions claimed by the employee, and must maintain a completed copy of the Employee's Withholding Allowance Certificate, Federal Form W-4, for audit purposes by the State of Nebraska.

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010.02 An employer who properly accepts a Federal Form W-4 claiming an exemption from federal withholding on income because the employee had no federal income tax liability the previous year and expects no federal income tax liability for the current year shall not withhold from such employee for the Nebraska income tax.

010.03 Any person who receives a state income tax credit, other than the personal exemption credit, that is not based on the receipt of a federal income tax credit may request that his or her employer apply for permission from the Tax Commissioner for an alternative method of calculating the proper amount of withholding.

010.03A The request must be made in writing by the employer. The request must include a proposed method of determining the withholding and the identification of the specific employee for whom the method will be used and the type and the expected amount of the credit.

010.03B The withholding must exceed the estimated tax liability by more than three hundred dollars (\$300.00) for an alternative method to be considered by the Tax Commissioner.

(Section 77-2753(2), R.S.Supp., 1993. May 14, 1994.)

REG-21-011 NEBRASKA WITHHOLDING TAX TO BE SEPARATELY STATED ON  
PAYROLL RECORDS, EMPLOYEE'S DOCUMENTS

011.01 In each payroll record furnished an employee by the employer for any purpose, the amount of Nebraska wages and withholding tax shall be stated separately from the wages and withholding tax for any other jurisdiction. The words "payroll record" as used in this regulation shall apply to the payroll check stub, a federal Form W-2, or any other document which the employer may furnish an employee.

(Sections 77-2753(1) and 77-2772, R.S.Supp., 1987. September 15, 1975.)

REG-21-012 EMPLOYEE LIABILITY FOR AMOUNT WITHHELD BUT NOT REMITTED  
TO THE DEPARTMENT OF REVENUE

012.01 Any amount of income tax actually deducted and withheld from a payment to an employee by his or her employer is deemed to have been paid to the Department of Revenue on behalf of the employee, even though the employer subsequently fails to remit the withheld amounts to the Department of Revenue. Such an employee shall be credited with having paid that amount of income tax for the taxable year beginning in the calendar year when the withholding occurred. In claiming said credit on his or her return for the taxable year, the employee shall attach to his or her return the state copy of Federal Form W-2 or 1099-MISC.

(Section 77-2755, R.R.S. 1943. May 14, 1994.)

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REG-21-013 MANNER OF FILING NEBRASKA RECONCILIATION OF INCOME TAX  
WITHHELD AND STATE COPIES OF FEDERAL FORMS W-2

013.01 Where the number of state copies of Federal Form W-2 or Federal Form 1099-MISC is substantial, they may be forwarded to the Department of Revenue in packages of convenient size. When this is done, the packages should be identified with the name and Nebraska employer identification number of the employer and the packages should be numbered consecutively. (For example: 3 packages should be numbered "1 of 3", "2 of 3", and "3 of 3".) Form W-3N should be placed in package number 1 and the number of packages should be indicated on that form.

013.02 If an employer's total payroll consists of a number of separate units or establishments, or the employer is filing Federal Form W-2Gs to report gambling winnings or Federal Form 1099-MISC to report nonresident withholding, the state copies of Federal Form W-2 or 1099-MISC may be assembled accordingly and a separate list submitted for each unit, establishment, or type of form being submitted. In such case, a summary list should be prepared, the total of which should agree with the corresponding entry made on Form W-3N.

013.03 Any employee copies of Federal Form W-2 or 1099-MISC to be attached to the state return which, after reasonable effort, cannot be delivered to employees, should be transmitted with the Nebraska Employer's Quarterly Withholding Return, Form 941N, during the month of July of the next calendar year. Any undeliverable state copies of Federal Form W-2 or 1099-MISC submitted to the Department of Revenue should be accompanied by a letter stating that they were submitted because they could not be delivered to the employees involved.

013.04 When Federal Forms W-2 or 1099-MISC are corrected by the employer or are reissued by an employer, such forms must be clearly marked either "corrected by employer" or "reissued by employer" and copies must be furnished to the employee and to the Department of Revenue as required by the Regulations.

013.05 All copies of any forms prepared by the employer and furnished to the employee or to the Department of Revenue shall be completed in full and must be entirely legible. In the event that said copies are not fully completed or are not legible, they will not be considered to have been furnished by the employer in compliance with the law, thereby subjecting the employer to the penalties for noncompliance as prescribed by Reg-21-017.

013.06 Every employer is to retain copies of all reconciliations filed with the Department of Revenue and copies of all documents furnished to employees for at least three years. If the employer reports Federal Form W-2 or 1099-MISC information on magnetic media, the employer may retain either the supporting documentation or a copy of the magnetic media for the time required.

(Sections 77-2745(1), and 77-2772, R.R.S. 1943. May 14, 1994.)

REG-21-014 EMPLOYER'S LIABILITY FOR WITHHELD TAXES

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014.01 Every employer required to deduct and withhold Nebraska tax from the wages of an employee is liable for payment of such tax whether or not it is collected from the employee. For purposes of assessment and collection, any amount required to be withheld and paid over to the Department of Revenue, plus any additions, penalties, or interest, shall be considered the tax of the employer.

014.02 Any amount of tax actually withheld shall constitute a special fund in trust for the Department of Revenue.

014.03 No employee shall have any right of action against his employer in respect to any money deducted and withheld from his wages and paid over to the Department of Revenue in compliance with or in intended compliance with the Act.

(Section 77-2757, R.R.S. 1943. September 15, 1975.)

REG-21-015 EMPLOYER'S FAILURE TO WITHHOLD

015.01 If the employer fails to deduct and withhold the tax as required under the Act, and thereafter, the income tax against which the withholding tax may be credited, is paid, the tax required to be deducted and withheld shall not be collected from the employer by the Department of Revenue. Such payment of the tax does not, however, operate to relieve the employer from liability for penalties, interest, or other additions caused by ~~his~~ failure to deduct and withhold.

015.02 The employer will not be relieved under this regulation from ~~his~~ liability for payment of the withholding tax unless he can show that the income tax, against which the withholding tax may be credited, has been paid.

(Section 77-2758, R.R.S. 1943. September 15, 1975.)

REG-21-016 EMPLOYER'S FAILURE TO FILE A RETURN AND PAY WITHHELD TAXES  
OR FAILURE TO PROPERLY WITHHOLD FROM WAGES - PENALTY

016.01 Any employer who fails to file a withholding tax return by the required due date, determined with regard to an extension of time to file, shall be subject to a penalty of five percent (5%) of the amount required to be shown on the return for each month or portion of a month in which the return is late, up to twenty-five percent (25%), or twenty-five dollars (\$25.00), whichever is greater. The penalty may be abated upon a showing that there was a reasonable cause for the late filing and that it was not the result of willful neglect. For purposes of determining the amount of the penalty, the amount shown on the return shall be reduced by the amount of tax paid prior to the due date and any credit properly claimed on the return.

016.02 If an employer, without intent to evade the provisions of the Act, shall withhold from his or her employees' wages but shall fail to file a return on Form 941N and pay the tax withheld, he or she shall be liable for those taxes together with interest at the rate specified in section 45-104.02 from the due date of the return until the date payment is received. In addition,

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the employer shall be liable for 5% of the amount unpaid. If the penalty is not paid within ten days of the notice and demand thereof, interest shall also apply to the amount of the penalty.

016.03 If the employer fails to withhold the proper tax as required under the Act, without an intent to defraud or evade, interest will be imposed at the rate specified in section 45-104.02, on the amount which should have been withheld and paid plus the 5% penalty on the amount which should have been withheld and paid to the Department of Revenue.

016.04 If the nonpayment of withholding tax to the Department of Revenue is a result of fraud by the employer, the amount of penalty shall be 50% of the unpaid amount instead of 5%. If the employer willfully fails to collect the proper amount of tax or to account for and pay over the proper amount of tax or willfully attempts to evade and defeat the tax, the penalty assessed shall be 100% of the amount of tax evaded, not collected, or not accounted for and paid, instead of 5% or 50%. If the employer's conduct is done with a fraudulent intent, the Department of Revenue may assess an additional penalty of up to one thousand dollars (\$1,000.00). In all these situations, the employer is subject to interest at the rate specified in section 45-104.02, on the amount due and on any penalty not paid within ten days of notice and demand of payment.

(Sections 77-2757, 77-2758, 77-2788, 77-2789 and 77-2790, R.R.S. 1996. November 11, 1998.)

REG-21-017 EMPLOYER'S FAILURE TO FILE FEDERAL FORM W-2 - PENALTY

017.01 If any employer fails to file with the Department of Revenue the state copy of federal Form W-2 on or before the date specified, or on or before the due date resulting from an extension, that employer shall be subject to a penalty of \$2.00 for each statement not so filed. If the employer can prove that his failure to properly file was the result of a reasonable cause and not negligence, the Department of Revenue will not assess this penalty. The maximum penalty assessable under this regulation on any one employer during any calendar year shall be \$2,000.

(Section 77-2789(2), R.R.S. 1943. September 15, 1975.)

REG-21-018 DEPARTMENT OF REVENUE MAY REQUIRE AN EARLY RETURN AND PAYMENT OF TAX WITHHELD

018.01 The Department of Revenue may by notice upon an employer require such employer to make a return and pay to the state the tax deducted and withheld by such employer at any time, or from time to time, whenever the Department of Revenue determines such action is necessary for the protection of revenue. The Department of Revenue will include in such notice a direction requiring the employer to remit the withheld taxes to the state. The notice provided for in this paragraph shall be served either personally or by registered or certified mail.

018.02 Whenever any employer fails to collect, trustfully account for, pay over, or make a return of the tax as required by the Act, the Department of Revenue may serve notice requiring such an employer to collect the taxes which become collectible after the service of notice, and pay them immediately to the Department of Revenue either by certified check or by bank draft.

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The interval of such collection and remittance, as prescribed by this regulation, may be as frequent as the end of each payroll period. The Department of Revenue may require that a certified check or bank draft for payment of withheld taxes must be received as early as the next business day following the close of the payroll period. Such notice of these requirements shall remain in effect until a notice of cancellation is served on the employer by the Department of Revenue.

(Section 77-2756, R.R.S. 1943. September 15, 1975.)

REG-21-019 CORRECTING MISTAKES IN WITHHOLDING

019.01 If less than the correct amount of tax is paid by the employer to the Department of Revenue, proper adjustment shall be made on the first return filed after the error is discovered. If no tax is withheld or if less than the correct amount of tax is withheld from any wage payment, the employer is authorized to deduct the amount of undercollection from later wage payments to the employee. However, the employer personally is liable to the Department of Revenue for any underpayment, and reimbursement of the employer is a matter for private settlement between the employer and the employee.

019.02 In any filing period, if more than the correct amount of tax is actually deducted from any wage payment and paid to the Department of Revenue, the excess deducted shall not be repaid directly to the employer or to the employee. The Department of Revenue may credit any overpayment against any tax liability imposed by the laws of the State of Nebraska on the employee. Any balance shall then be refunded by the State Treasurer pursuant to the law regarding refunds. If there has been an overpayment of withholding tax to the Department of Revenue by the employer, a refund shall be made to the employer, but only to the extent that the amount of overpayment was not actually deducted and withheld by the employer from any wage payment.

(Sections 77-2753(1), 77-2757, and 77-2791, R.R.S. 1943. September 15, 1975.)

REG-21-020 EMPLOYERS WITH PAYROLLS ON AUTOMATIC DATA EQUIPMENT

020.01 Any employer who uses automatic data equipment for computing payroll may submit a computer print-out or magnetic tape in lieu of the state copy of Federal Form W-2, or may use electronic methods to transfer the information, when filing this information with the Department of Revenue. However, before any computer print-out, magnetic tape, or other electronic reporting can be accepted by the Department of Revenue, the employer must have obtained written approval from the Department of Revenue, based upon compatibility of the employer's system and the system used by the Department of Revenue.

(Section 77-2772, R.R.S. 1943. May 14, 1994.)